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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

NO. 517

ALLEN WILLIAMS,

Petitioner

V.

UNITED STATES OF AMERICA

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. _____

Allen Williams,

Petitioner,

Vs.

United States,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Petitioner, an individual, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above cause on July 5, 1966, which affirmed the judgment against the Petitioner in the United States District Court for the Northern District of Texas, Amarillo Division.

Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit, rendered July 5, 1966, and is appended at page 2a, infra.

Jurisdiction

The judgment for the Circuit Court of Appeals was entered on July 5, 1966. The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. Sec. 1254(1), and under Rule 37(b) of the Federal Rules of Criminal Procedure.

Questions Presented

1.

Whether the evidence is sufficient enough to prove that the petitioner did in fact transport or cause to be transported in interstate commerce the named women and whether the immoral purpose of the transportation, if any, existed prior to or concurrent with the transportation.

2.

Whether the Federal District Court,

which was upheld by the Court of Appeals, failed to properly charge the jury upon the essential elements which make up the offense charged and further erred in refusing to give the petitioner's requested instruction number one.

Statutes Involved

Title 18, U.S.C., section 2421 provides that whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any territory or possession of the United States, any women or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose, or which intent and purpose is to induce, intice or compel such women or girl to become a prostitute or to give herself up to debauchery, or to engage in any immoral practice;

Section 52(b) of the Federal Rules of Criminal Procedure explains plain error and provides:

> "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

Statement

Petitioner, Allen Williams is an individual, who was charged with the interstate transportation of a woman for immoral purpose from the State of New Mexico to the State of Texas, in particular, Amarillo, Texas. It is the petitioner's position that the testimony indicated that the woman was transported across a State Line, however, it was not at the request or knowledge of the petitioner as such and that he had no intent or purpose to induce, intice or compel the women to be a prostitute or give herself up to debauchery and that the prosecution failed to show that an immoral purpose of the transportation existed prior to or concurrent with the transportation. Page 35 and 36 of the record the prosecuting witness testified that when one Sammy Scott was leaving Clovis, New Mexico, going to Amarillo, Texas, that the petitioner got a ride and the prosecuting witness went along also.

The prosecuting witness was able to testify, See Pages 40 & 41, that she worked in Amarillo as a prostitute and that she also worked in Clovis, New Mexico as one, and in some manner was affiliated with the petitioner, but no purpose for the trip or intent on behalf of the petitioner was proved by the prosecution in their presentation of the case in the District Court.

It is the petitioner's viewpoint that the existence of the intent or purpose of the transportation must exist prior to or concurrent with the interstate trip of the victim. The trial court in his charge to the jury failed to charge upon this necessary element which goes to make up the offense charged. The petitioner objected to the charge of the court, but did not submit a requested written charge on the point, believing that the trial court would instruct on all the essential questions of law involved in this case, whether requested to do so or not. The requested instruction

number one is located on page 138 and 139 of the printed record of the case.

The Court of Appeals, Appendix C, infra, page 4a affirmed by Judgment on July 5, 1966.

Reasons for Granting the Writ

The Petitioner, Allen Williams, was convicted for unlawfully transporting or causing to be transported in interstate commerce two women, to-wit: Rosie Nell Walker and Paula Evans, females, for immoral purposes of engaging in the practice of prostitution. The Petitioner denies that the United States has proved that he in fact transported or caused the women to be transported in interstate commerce or that there was proven an immoral purpose of the transportation or that it existed prior to or concurrent with the transportation. The prosecution used as their main witness one of the women alleged to have been transported, Rosie Nell Walker. The only real evidence that the woman went with the petitioier from Clovis, New Mexico, to Amarillo, Texas, was that when she was

asked why she made the trip to Amarillo, she stated that she guessed that the petitioner wanted to leave Clovis. (See printed record, page 36)

With the exception of the testimony of Rosie Nell, the only testimony in the record concerning alleged transportation by the petitioner and the purpose for such transportation is to be found in the record as follows: At page 35 and 36 of the record, the prosecuting witness testified that when Sammy Scott was leaving Clovis to Amarillo, the petitioner got a ride over there with Sammy and that Rosie Nell went along also.

The gist of the offense of transporting a woman or a girl for immoral purposes is the "transportation." In Harms v. U.S., 272 F. 2d 748, the court said that the gravamen of the offense is the inducement or persuasion to travel in interstate commerce for the immoral purpose set forth in the act. The immoral acts are pursuits in themselves are the exclusive regulation of the police power of the

state where they are committed. The statute makes intent to transport the women in interstate for such immoral purpose an element of the crime. See also U.S. v. Jamerson,60 F.Sup. 281.

It is apparent that the government has proved that the petitioner knew and had dealings with the prosecuting witness, Rosie Nell Walker, prior to the trip from Clovis, New Mexico, to Amarillo, Texas, and they had such dealings subsequent to their arrival in Amarillo, Texas. No where does the record reflect that the petitioner forced, payed or any induced or coerced the prosecuting witness to get in the car and make the trip across the State Line.

In the case of Weaver vs. U.S., 11 F. 2d 603, at page 608, the Court stated that the rule is that if it is the duty of the trial court to give the instruction at the first instance, there is a legal presumption that the Court will do so and the defendant has a right to reply upon the presumption and file no written request.

In such a case the appellant is not charged with a cupable violation of the rule of the court or lack of diligence in complying with it, and a request made at the conclusion of the Court's charge is timely not withstanding the rule. See also Speiller vs. U.S., 3rd Circuit, 31 F. 2d 682, 683.

In the event that the Court should decide that the petitioner failed to properly point out to the Trial court that the failure to charge upon this essential element of the offense, we further respectfully submit that this omission to instruct upon all the essential questions of law involved in the case constituted plain error under rule 52(b), Federal Rules of Criminal Procedure. Under said rule, plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. It is the feeling of the petitioner that this was a substantial right of the petitioner and would violate his due process of law.

In the case of U.S. vs. Atkinson, 297 U.S. 157, at page 160, the court states an exception to the rule where the petitioner would not object if it is fundamental error the Court of Appeal on its own motion should take notice of such error. The court stated that the failure of the trial court to guide the jury in this respect could may have well caused them to omit from consideration this branch of the case

When the Court in the present case submitted his charge to counsel for objections thereto, counsel presented to the court his special request for instruction number one. Printed Record, page 138. Same was by the Court refused. In the case of Eddington vs. U.S.,146 U.S. 361, the court gave the instruction concerning the elements of good character. Said instruction was in correct form. The Court there said:

". . .good character, when considered in connection with the other evidence

> in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue, would alone create a reasonable doubt, although, without it the evidence would be convincing."

In that case, the Appeal Court reversed the Trial Court because of the error in failing to tell the jurors that character testimony may be such that it alone may create a reasonable doubt, although without it the evidence might be convincing. In this case the only incriminating evidence was given by the prosecuting witness, Rosie Nell Walker. The appellant, himself, denied every point of the case concerning complicity or responsibility of facts of prostitution of the two women involved.

It is the belief of the petitioner that the jury should have benefit of considering the testimony offered by the petitioner relative to the reputation of

the witness, Rosie Nell Walker, for truth and veracity as the credibility of the witness was directly in point and unless the jury would believe that the testimony was true, the government's case could fall.

It seems fundamental that this was a necessary charge to be given to the jury in order that they might know that their belief in this reputation testimony was sufficient to destroy any probative value in said testimony and sufficient to create the doubt requiring them to return a verdict of not guilty.

Conclusion

For the foregoing reasons, writ of Certiorari should be granted herein.

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August 30, 1966

Appendix A

Statutory Provisions

Title 18, U.S.C, Section 2421 states:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any territory or possession of the United States, any women or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose, or which intent and purpose is to induce, intice or compel such women or girl to become a prostitute or to give herself up to debauchery, or to engage in any immoral practice;

Section 52(b) of the Federal Rules of Criminal Procedure explains:

> Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Appendix B

In The

United States Court of Appeals

For the Fifth Circuit

NO. 22993

Allen Williams,

Appellant

versus

United States of America,

Appellee.

Appeal from the United States District Court for the Northern District of Texas

---

(July 5, 1966)

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and CHOATE, District Judge.

PER CURIAM: In this prosecution for violation of the Mann Act, 18 U.S.C.A. 2421, we conclude that the evidence was ample to warrant submission of the case to the jury. We find no error in the Court's charge or in the Court's refusal

to give the charge requested by the appellant's counsel.

The judgment is AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

October Term, 1965

NO. 22993

D.C. Docket No. 2-185-Criminal Action

ALLEN WILLIAMS,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Texas.

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and CHOATE, District Judge.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was taken under submission by the Court upon the record and briefs on file;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

July 5, 1966.

Issued as Mandate: